

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

Allah Burman

v.

Civil No. 20-cv-982-JD

Warden, Federal Correctional  
Institution, Berlin, New Hampshire

O R D E R

Allah Burman, who is an inmate at the Federal Correctional Institution in Berlin, New Hampshire, ("FCI Berlin") and is proceeding pro se, filed a petition for relief under 28 U.S.C. § 2241. Following preliminary review, the petition was served on the warden at FCI Berlin. Burman then filed an "ex parte" petition under § 2241, which was struck in this case and was docketed as the initial petition in a separate case.

In response, Burman filed a document titled: "Notice of Appeal to the Supreme Court of the United States DC." Doc. no. 14. Burman appeared to challenge the magistrate judge's decision to strike the ex parte petition in this case and to open a new case with that petition as the initiating document. Burman then filed a motion titled "Motion in Pursuant to Rule 23 - - Custody or Release of a Prisoner in a Habeas Corpus Proceeding." In the accompanying letter, Burman stated that he filed the notice of appeal in error and asked the court to

disregard the notice. In the motion, Burman demanded an ex parte hearing for his release from custody while his habeas petition is pending under "Rule 23(c)."

A. Notice of Appeal

Because Burman filed the notice of appeal (document no. 14) in error and asks the court to disregard it, the notice will be struck from the docket.

B. Motion for Release

Burman relies on Federal Rule of Appellate Procedure 23(c) as the basis for his demand for release pending resolution of his habeas petition in this case. The Federal Rules of Appellate Procedure, however, govern procedure in the courts of appeals, not in the district courts. Fed. R. App. P. 1(a)(1). Therefore, Rule 23(c) does not apply in this case.

Further, Rule 23(c) applies only when the appellate court is reviewing an order to release a prisoner. There is no order in this case to release Burman. Therefore, Rule 23(c) also does not apply in the circumstances presented here.

Because the motion for release is meritless, there is no need for a hearing.

Conclusion

For the foregoing reasons, Burman's motion for release (document no. 15) is denied.

The notice of appeal (document no. 14) was filed in error and is struck from the docket.

SO ORDERED.

  
Joseph A. DiClerico, Jr.  
United States District Judge

April 20, 2021

cc: Allah Burman, pro se.  
Seth R. Aframe, AUSA.